

**BEFORE THE KHYBER PAKHTUNKHWA,
SERVICE TRIBUNAL, PESHAWAR**

Service Appeal No. 2455/2023

Mr. Farukh Jadoon.....Appellant

VERSUS

Chief Secretary, Khyber Pakhtunkhwa & OthersRespondents

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Dated: 29.12.2023


Deponent

CNIC No: 17301-6272682-3
Contact No: 0315-5737137

4-1-2024



BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL, PESHAWAR

Service Appeal No.2455/2023

Farrukh Jadoon, Resident of Village and P/O Langra, Tehsil Havelian, district Abbottabad
.....(Appellant)

Versus

Government of Khyber Pakhtunkhwa through Chief Secretary, Khyber Pakhtunkhwa, Peshawar
& others.....(Respondents)

JOINT PARAWISE COMMENTS ON BEHALF OF RESPONDENTS.

Respectfully Sheweth, the Respondents submit as under:-

**Khyber Pakhtunkhwa
Service Tribunal**

Diary No. 10322

Dated 3-1-2024

PRELIMINARY OBJECTIONS:

1. That the appellant has got no cause of action/locus standi to file the instant appeal against the respondents.
2. That the appeal is not maintainable.
3. That the appellant has presented the facts in manipulated form which disentitles him for any relief whatsoever.
4. That the appeal is barred by law and limitation.
6. That the appellant has suppressed material facts from the Tribunal.
7. That the appellant has not come to the Tribunal with clean hands.
8. That the appellant is estopped to file the instant appeal due to his own conduct.
9. That the material facts of the appeal are related to National Highway Authority, Islamabad which the appellant has not arrayed as necessary party.

REPLY TO FACTS:

1. **Correct as laid.**
2. As admitted by the appellant, he while entrusted with Additional Charge of LAC CPEC-HT (Havelian-Thakot) was proceeded against under the Khyber Pakhtunkhwa Government Servants (Efficiency & Disciplinary) Rules, 2011 on account of the charges mentioned in the charge sheet, primarily on the charge that he, in violation of Section 12-A of Land Acquisition Act, 1894, included 13 Kanal and 03 Marla of commercial land vide 2nd Corrigendum to Award No.14 for Mouza Khokhar Interchange and awarded new rates on the basis of his formulation instead of adopting Chakwise Ausat under the rules which caused a loss to the tune of **Rs.75,010,564/- (75.01M)** to the Government Exchequer. The charges levelled against the appellant stood proved in the Inquiry Report and consequently major penalty of "Removal from Service" was imposed upon him by the Competent Authority under the Rules ibid.
3. **No Comment** as the fact of the matter relates to National Highway Authority, Islamabad, which the appellant has not arrayed the Authority as necessary party.

4. **Subject to proof**, as it relates to NHA and the appellant has failed to substantiate his assertion/claim with documentary proof. **Moreover, instead of referring to facts of the case, the appellant is required to rely on relevant law/act which invested in him powers to include additional commercial land (13 Kanal 3 marla) in an already announced Award No.14 by issuing Corrigendum. The section 12A of Land Acquisition Act, 1894 invests powers in the LAC only to the extent of correction/rectification of the typographical or arithmetical mistakes in the award.** If there was any discrepancy in measurement or acquisition of additional land was required, the appellant had better announced a separate Award instead of including the same in an already announced Award in violation of the section 12A of the Act *ibid*.
5. **As admitted by the appellant**, in violation of the Act *ibid*, the appellant included additional land by announcing the 2nd Corrigendum of Award No.14.
6. **No Comment as it relates to NHA.**
7. **Correct** that Mr. Tariq Hassan, Secretary Regional Transport Authority was appointed as Inquiry Officer and the appellant was served with Charge Sheet & Statement of Allegations vide notification dated 14.04.2022 by the competent authority.
8. Correct to the extent that in view of findings of the Inquiry Report, the competent authority i.e., the Chief Minister, Khyber Pakhtunkhwa, show caused the appellant with tentative penalty of "Removal from Service". Findings of the inquiry report as per Para-5 of the Show Cause Notice were provided to the appellant, however, as far as non-provision of the whole inquiry report is concerned, no request as such for provision of the whole inquiry report was made by the appellant, and later on, upon his request Inquiry Report was provided to the appellant vide letter dated 17.11.2023. Besides this, the appellant was facilitated throughout the inquiry proceedings which were carried out in a fair and transparent manner.
9. As admitted by the appellant, ample opportunities of defence were provided to the appellant including affording Personal Hearing by the Hearing Officer on behalf of the competent authority but the appellant could not satisfy the Hearing Officer, *inter alia*, on the followings:-
 - i. Inclusion of 13 Kanal & 3 Marla commercial land vide 2nd Corrigendum to Award No.14 in violation of Section-12A of Land Acquisition Act, 1894;
 - ii. Awarding new rates on the basis of his formulation instead relevant procedure/guidelines and without prior approval from the competent authority;
 - iii. Making payments from other heads of accounts without the approval of the competent authority.

- 10. The appellant under sub-rule (8) of the Rule 14 of the Efficiency & Discipline Rules, 2011 *ibid* had remedy to file an application before the appellate authority for early disposal of the case;
- 11. Correct that the appellant filed a Review Petition before the appellate authority which was duly processed and the Hon'ble Chief Minister, Khyber Pakhtunkhwa in terms of Rule 17(2) of the (Efficiency & Discipline) Rules, 2011 *ibid* upheld the order of penalty and rejected the appeal/review petition.
- 12. The appellant is not aggrieved person in true sense as he has been treated in accordance with law and the penalty imposed upon him is commensurate with quantum of his misconduct, corruption and misuse of official position. Therefore, he has got no valid locus standi and thus is not entitled for any relief whatsoever and, the appeal is liable to be dismissed in limine.

REPLY TO GROUNDS:

- A. **Incorrect. As admitted by the appellant**, disciplinary proceedings were initiated against him, apart from other charges, on account of inclusion of additional commercial land in an already announced Award in violation of law, however, it was not limited to that only, as it was coupled with another illegality of applying new rates on the basis of his own formulation and making payments from other heads of accounts without the approval of the competent authority. The rest of para has already been responded vide Para-4 of the "FACTS".
- B. **Incorrect and misleading.** Due process of law has been followed and the appellant has been provided ample opportunity to defend himself against the charges, right form initiation of inquiry proceedings till its culmination. Moreover, the appellant has failed to lend any credence to his false assertion by pointed out any discrepancy in the disciplinary proceedings, as to how due process of law has not been followed and how he has been deprived of the right to fair trial.
- C. **Incorrect and misleading.** The appellant has not been condemned unheard as is evident from the inquiry report, he was heard on 25.04.2022 and ample time for written defence to allegation in terms Rules-10(1)(d) of the E&D Rules, 2011 *ibid* was provided to the appellant and accordingly, he submitted his written defence on 26.04.2022. Likewise, on his request, opportunity of personal hearing was also afforded to him, but he failed to defend his illegal actions and malpractices. As regards objection to inclusion of co-opted member in the Inquiry, on the request of the Inquiry Officer to appoint a revenue expert to assist him in the inquiry proceedings, Mr. Humayun Khan, Naib Tehsildar, Peshawar was appointed by the competent authority under Rule-10(3) of the E&D Rules, 2011 *ibid*

to assist the inquiry officer in understanding the technicalities and procedure of land acquisition.

D. **Incorrect and misleading.** As replied in the preceding paras, the inquiry against the appellant was conducted as per law and in a free and impartial manner. Moreover, the instant para relates to NHA which the appellant has not made party in his appeal.

E. **Incorrect and misleading.** The order/notification whereby major penalty of Removal from Service was imposed upon the appellant, was passed in light of Rule-14(5) of the E&D Rules, 2011 *ibid*, which stipulates the following:

"after affording personal hearing to the accused the competent authority shall, keeping in view the findings and recommendations of the inquiry officer or inquiry committee, as the case may be, facts of the case and defence offered by the accused during personal hearing, by an order in writing-

- (i) *exonerate the accused if charges have not been proved; or*
- (ii) *impose any one or more of the penalties specified in rule 4 if charges have been proved".*

F. **Incorrect and misleading.** As per Rule-11(4) of the E& Rules, 2011 *ibid*, statement of witness is required to be recorded in the presence of accused, however, in the case/inquiry of appellant, there was not any witness, produced by any party, and as such the contention of the appellant of not affording opportunity of examination/cross-examination is unfounded and baseless. Moreover, statement of the departmental representative as a witness cannot be recorded as it does not include in his duties, defined under Rule-13 of the E&D Rules, 2011 *ibid*. Hence, the contention of the appellant does not hold grounds.

G. **Incorrect and misleading.** As already replied vide Para-A,B,C,D & F.


H. **Incorrect and misleading.** The appellant has admitted that regardless of the fact the Corrigendum in question to Awarad No.14 was announced illegally and in violation of Section-12A of the Act *ibid*, the acquired land has been utilized the acquiring authority i.e., NHA. However, the appellant is oblivious of the fact that in official business it is not the end that justifies the means rather the means that lead to the end. The appellant was required to have followed the Act/law/guidelines instead of applying his own mind, wish and whim as the only guiding principle for a government official while performing official business is strictly adhering to relevant laws/rules/policy.


I. **Incorrect as laid.** Any land declared to be needed for public purpose, is required to be acquired under the Land Acquisition Act, 1894 and as per Section-11 & 12 of the act it the competency of the LAC to announce the final award. Thus, the appellant cannot implicate others in his own wrongdoings.

- J. **Incorrect as laid.** As replied vide Para-H, it was his illegal action/inefficiency that the appellant rendered himself liable to be proceeded against under the rules which ultimately led to his removal from service.
- K. **Incorrect.** The rest as already explained in the preceding **Para-2, 4 & 9 of the "Facts"** and **Para-H of the "Grounds"**.
- L. **Incorrect and misleading.** The rest as already explained in the preceding **Para-2, 4 9 & 11 of the "Facts"**.
- M. **Incorrect and misleading.** As explained in the preceding paras.
- N. The Respondents also seek permission to adduce additional grounds/documents at the time of the hearing of the appeal.
- O. The Hon'ble Tribunal is requested to first decide the question of limitation and jurisdiction before going into the merits of the appeal.

Prayer:

In view of the above, It is most humbly prayed that the instant appeal being bereft of any legal merit may very graciously be dismissed with cost.


for (SHAHIDULLAH)
Secretary, Establishment Department
Khyber Pakhtunkhwa
(Respondent No.3)


for (NADEEM ASLAM CHAUDHRY)
Chief Secretary Khyber Pakhtunkhwa
(Respondent No.1&2)

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**BEFORE THE KHYBER PAKHTUNKHWA, SERVICE
TRIBUNAL, PESHAWAR**

Service Appeal: 2455/2023

Mr. Farukh jadoon.....**Appellant**

VERSUS

Chief Secretary Khyber Pakhtunkhwa & Others**Respondents**

AFFIDAVIT

I, Kaleem Ullah Baloch, Special Secretary Establishment Department do hereby solemnly affirm and declare on that oath contents of the accompanying parawise comments are true and correct to the best of my knowledge and belief and nothing has been concealed from this Honorable Tribunal. It is further stated an oath that in this appeal the answering respondents have neither been place ex-party nor their defense has been struck off.

DEPONENT



**Kaleem Ullah Baloch
Special Secretary Establishment
Contact: 0346-8853313**





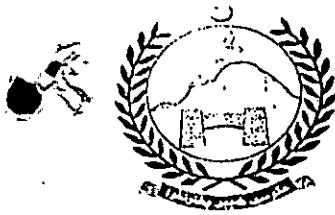
GOVERNMENT OF KHYBER PAKHTUNKHWA
ESTABLISHMENT DEPARTMENT
(Judicial Wing)

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AUTHORITY LETTER

Mr. Riaz Khan, Superintendent (Litigation-III Section) Establishment Department is hereby authorized to submit Affidavit to The Khyber Pakhtunkhwa Service Tribunal, Peshawar in Service Appeal No. 2455/2023 titled as "**FARUKH JADOON VS GOVERNMENT OF KHYBER PAKHTUNKHWA & OTHERS**" on behalf of The Government of Khyber Pakhtunkhwa through Chief Secretary, Khyber Pakhtunkhwa and others being respondents.

Kaleem Ullah Baloch
Special Secretary
Establishment



GOVERNMENT OF KHYBER PAKHTUNKHWA
ESTABLISHMENT DEPARTMENT

No. SO(Policy)/E&AD/Misc/2020
Dated Peshawar, the December 24, 2020

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To

1. The Director STI, E&A Department.
2. All Additional Secretaries in E&AD.
3. All Deputy Secretaries in E&AD.
4. All Section Officers in E&AD.
5. The Estate Officer/Programme Officer (Computer Cell) in E&AD.

Subject: SIGNING OF PARAWISE COMMENTS ETC IN SERVICE APPEALS.

Dear Sir,

I am directed to refer to this Department letter No.SOR-VI/E&AD/1-23/2005 dated 12-01-2008 (copy enclosed) on the subject, the Competent Authority has been pleased to authorize the Special Secretary (Establishment) Establishment Department to sign the para-wise comments in cases of service appeals filed by the Civil Servants before the Khyber Pakhtunkhwa Service Tribunal on behalf of Chief Secretary, Khyber Pakhtunkhwa and Secretary, Establishment Khyber Pakhtunkhwa.

Yours faithfully,

SECTION OFFICER (POLICY)

ENDST: NO. & DATE EVEN

Copy forwarded to:

1. Secretary to Govt. of Khyber Pakhtunkhwa, Law Department
2. Registrar Peshawar High Court Peshawar.
3. Advocate General Khyber Pakhtunkhwa, Peshawar.
4. Registrar Khyber Pakhtunkhwa Service Tribunal, Peshawar.
5. PS to Chief Secretary, Khyber Pakhtunkhwa
6. PS to Secretary Establishment, Khyber Pakhtunkhwa
7. PS to Special Secretary (Establishment) Establishment Department
8. PS to Special Secretary (Reg). Establishment Department.

SECTION OFFICER (POLICY)